

## DECISION

THE COMPTROLLER GENERAL  
OF THE UNITED STATES

WASHINGTON, D.C. 20548

10,035

FILE: B-194063

DATE:

MAY 4 1979

*[Questions regarding*  
MATTER OF: Department of Labor Appropriations under Continuing  
Resolution]

- DIGEST: 1. Funds appropriated by the fiscal year 1979 continuing resolution to carry out the provisions of the Comprehensive Employment and Training Act (CETA), are available until September 30, 1980. The specific CETA provision making appropriated funds available for two years takes precedence over the more general provision in the continuing resolution which would terminate the availability of the money at the end of the 1979 fiscal year.
2. The term "current rate" of operations as used in continuing resolutions is equivalent to the total funds appropriated or available for obligation for an activity during the previous fiscal year. The 1979 continuing resolution appropriates only the total of appropriations for the Older American Community Service Employment Program during fiscal year 1978, despite the fact that an increase in the federal minimum wage will force a reduction in the number of persons employed by the program.

This decision is in response to two questions from the Assistant Secretary of Labor for Administration and Management, involving the amount and period of availability of funds appropriated to the Department of Labor by the "Joint Resolution Making Continuing Appropriations for the Fiscal Year 1979, and for other purposes." Pub. L. No. 95-482, approved October 18, 1978, 92 Stat. 1603 (referred to as the continuing resolution).

The first question is whether funds appropriated by the continuing resolution for programs under the Comprehensive Employment and Training Act, as amended (CETA), may be obligated over a 2-year period. The second question is:

"Whether the Continuing Resolution should be interpreted as providing, for programs under the Older Americans Act, funds sufficient to pay the increased wages, required as of January 1, 1979, by reason of the rise in the Federal minimum wage under section 6(a)(1) of the Fair Labor Standards Act, without a reduction in the amount of program activities."

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For the reasons indicated below we answer the first question in the affirmative and the second in the negative.

The continuing resolution appropriates in section 101(a):

"Such amounts as may be necessary for continuing the following activities, not otherwise provided for, which were conducted in fiscal year 1978, but at a rate for operations not in excess of the current rate:

\* \* \* \* \*

activities under the Older Americans Act including provision of cash or commodities;

\* \* \* \* \*

activities under the Comprehensive Employment and Training Act, except that such activities shall be continued at a rate for operations not in excess of the lower of the current rate or the rate authorized by S. 2370 as passed the House of Representatives \* \* \*."

Section 102 of the resolution provides:

"Appropriations and funds made available and authority granted pursuant to this joint resolution shall be available from October 1, 1978, and shall remain available until (a) enactment into law of an appropriation for any project or activity provided for in this joint resolution, or (b) enactment of the applicable appropriations Act by both Houses without any provision for such project or activity, or (c) September 30, 1979, whichever first occurs."

Under this provision, it would appear that funds appropriated by the continuing resolution are available only until September 30, 1979, at the latest. However, section 4(b) of the Comprehensive Employment and Training Act of 1973, 28 U.S.C. § 802(b) (1976), which was in effect when the continuing resolution was enacted, provides:

"Notwithstanding any other provision of law, unless enacted in specific limitation of the provisions of this subsection, any funds appropriated to carry out this chapter which are not obligated prior to the end of

the fiscal year for which such funds were appropriated shall remain available for obligation during the succeeding fiscal year, and any funds obligated in any fiscal year may be expended during a period of two years from the date of obligation."

This provision, in effect, makes all funds appropriated to carry out CETA available for two years, unless Congress takes specific action to overcome it.

We have long followed the principle of statutory construction that when there is a seeming conflict between a general statutory provision and a specific statutory provision, and the general provision is broad enough to include the subject matter to which the specific provision relates, the specific provision will be considered an exception to the general provision. See, e.g., B-163375, September 2, 1971. In this way we can give effect to both provisions.

In the present instance, section 102 of the continuing resolution applies to appropriations for programs under about twenty acts. Section 4(b) of CETA applies only to appropriations under CETA. Thus, the provision in the continuing resolution is the general provision, and the provision in CETA is the specific provision. It follows that funds appropriated by the continuing resolution are available only until September 30, 1979, except for funds appropriated to carry out CETA, which remain available until September 30, 1980.

This interpretation is supported by the specific language of section 4(b) of CETA which provides that funds are to remain available during the fiscal year subsequent to the one in which they were appropriated "[n]otwithstanding any other provision of law, unless enacted in specific limitation of the provisions of this subsection." Although the continuing resolution is the later enactment, it is clear that it contains no provision which limits the availability of CETA funds in particular to one year. Therefore, the condition in the CETA legislation has not been met and it remains controlling.

It could be argued that the 2-year provision referred to above expired on September 30, 1978, with the rest of the CETA authorization. However, the Comprehensive Employment and Training Act Amendments of 1978, Pub. L. No. 95-524, which was approved October 27, 1978, subsequent to the enactment of the continuing resolution, extended the authorization for CETA programs. Section 112(c) of this act is identical to section 4(b) of the 1973

CHTA, again making CHTA funds available for two years. Under the rule of statutory construction that the more recent of conflicting provisions, being the later expression of congressional intent, is controlling, section 112(c) of the CHTA amendments would prevail over section 102 of the continuing resolution. See B-118678, June 11, 1976; 53 Comp. Gen. 117 (1973); 53 Comp. Gen. 693 (1974).

For the reasons stated, we must conclude that funds appropriated for CHTA programs by the continuing resolution are available until September 30, 1980. Therefore they may be obligated over a 4 year period.

The second question involves the proper interpretation of the phrase in section 101 of the continuing resolution which appropriates funds for continuing activities under the Older Americans Act "at a rate for operations not in excess of the current rate." It is apparently the Department's position that the continuing resolution does not provide the same sum of money as was spent in fiscal year 1978, but instead it provides sufficient funds to continue current activities at the same level of program activity. In a memorandum dated December 7, 1978, the Solicitor of Labor states:

"Therefore, it [the continuing resolution] appropriates funds sufficient to continue programs under Title V of the Older Americans Act without a reduction of job slots or other program activities."

The Department of the Treasury has taken the position that the "current rate of operations" is the latest fiscal year's monetary operating rate. Thus, the Assistant Secretary of Labor has requested our decision on this matter.

Section 902(b)(1) of the Older Americans Community Service Employment Act, 29 U.S.C. § 3034(b)(1) (1976), provides, in part:

"\* \* \* No payment shall be made by the Secretary toward the cost of any project established or administered by any such organization or agency unless he determines that such project--

\* \* \* \* \*

"(j) \* \* \* will assure that persons employed in community service jobs assisted under this title shall be paid wages which shall not be lower than whichever is the highest of (i) the minimum wage which would be

applicable to the employee under the Fair Labor Standards Act of 1938, if section 6(a)(1) of such Act applied to the participant and if he were not exempt under section 13 thereof \* \* \*."

This provision, in effect, requires the payment of the Federal minimum wage to participants in the federally funded Older American Community Service Employment Program. The minimum wage, set out in section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C.A. § 206(a)(1), increased from \$2.65 per hour in calendar year 1978 to \$2.90 per hour in calendar year 1979, and will further increase to \$3.10 per hour in calendar year 1980. It is the position of the Department of Labor that the continuing resolution should be interpreted as appropriating sufficient funds to enable the program to employ, at the increased minimum wage, the same number of persons in fiscal year 1979 as it did in fiscal year 1978.

Section 101(a) of the continuing resolution appropriates funds to continue operation of the Older American Community Service Employment Program in fiscal year 1979, "but at a rate for operations not in excess of the current rate." In the past, we have repeatedly interpreted the term "current rate" as used in continuing resolutions as being equivalent to the total funds appropriated or available for obligation for an activity during the previous fiscal year. See, e.g., B-152554, November 4, 1974; B-164031(1), December 13, 1972; B-152554, December 6, 1963. In the present case, the total money appropriated for the program in fiscal year 1978, including supplemental appropriations, was \$211.7 million. Therefore, the maximum amount available for obligation for the program under the continuing resolution in fiscal year 1979 is \$211.7 million.

We realize that our determination will necessitate a reduction in the number of persons employed by the program in fiscal year 1979. However, the Older American Community Service Employment Act does not mandate any particular number of jobs or establish entitlement to participate in the program. If the Congress desires the program to employ the same number of persons as it did in fiscal year 1978, a supplemental appropriation will be necessary.

R.F. KELLER

Acting

Comptroller General  
of the United States